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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,616	05/04/2001	Peter Sebbel	1700.0180002/JAG/BJD	6018
28393	7590	07/22/2004	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVE., N.W. WASHINGTON, DC 20005			MOSHER, MARY	
			ART UNIT	PAPER NUMBER

1648

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/848,616

Applicant(s)

SEBBEL ET AL.

Examiner

Mary E. Mosher, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 86 and 90-110 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 86 and 90-110 is/are rejected.
- 7) ☒ Claim(s) 101-105 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/29/2004 has been entered.

Response to Arguments

On consideration, applicant's arguments presented 4/29/2004 are convincing, and the rejections under 35 USC 103 are withdrawn.

Claim Objections

Claims 101 - 105 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 101 and 105 depend indirectly from claim 98, which is drawn to a vaccine composition. Since a vaccine, by definition, induces a protective immune response, claims 101 and 105 provide no further limitation upon parent claim 100, which is drawn to a method of immunizing using the (protective) vaccine composition of claim 98. This affects dependent claims 102-104. It is suggested that applicant amend claims 98 and 99 to recite "an

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immunogenic composition” rather than “a vaccine composition”, and delete the word “vaccine” from claims 100 and 108.

Information Disclosure Statement

Applicant’s representative recently contacted the examiner to indicate that a new IDS was being filed; the IDS has not been made available to the examiner at this date (it either has not been received or has not been scanned into the image file).

Double Patenting

Claims 86, 90-110 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 100-114 of copending Application No. 10/050,902. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims include the array based upon the cysteine-modified derivative of SEQ ID NO: 158.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 86, 90-110 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14-16 of copending Application No. 10/050,898. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims include the array based upon the cysteine-modified derivative of SEQ ID NO: 158.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Allowable Subject Matter

Claims 86, 90-100, 106-110 are allowable, subject to resolution of provisional double patenting issues. Note that, when provisional double patenting issues are the only issues remaining, the provisional rejection can be withdrawn in one of the applications, see MPEP 822.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary E. Mosher, Ph.D. whose telephone number is 571-272-0906. The examiner can normally be reached on M-T and alternate F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

7/21/04

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MARY E. MOSHER
PRIMARY EXAMINER
GROUP 1600

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